



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Michelle D. Corcoran
Michael J. Corcoran
P.O. Box 2113
Merrimack, NH 03054-2113

RE: License No. AC-029, Asbestos
Abatement Entity

**NOTICE OF PROPOSED
LICENSE ACTION
No. 06-003**

June 28, 2006

I. INTRODUCTION

This Notice of Proposed License Action is issued by the Department of Environmental Services, Air Resources Division to Michele D. Corcoran and Michael J. Corcoran, pursuant to RSA 541-A:30, RSA 141-E:10 and He-P 5008.07. The Division is proposing that the Department of Environmental Services ("DES") revoke Asbestos Abatement Entity License No. AC-029, held by Michele D. Corcoran and Michael J. Corcoran, based on the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. PARTIES

1. The Department of Environmental Services, Air Resources Division ("the Division") is a duly-constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, New Hampshire.
2. Michele D. and Michael J. Corcoran are individuals, d/b/a ASTEC Asbestos Technologies ("ASTEC"), a/k/a Air-Soil Technologies, having a mailing address of P.O. Box 2113, Merrimack, NH 03054-2113.

III. SUMMARY OF FACTS AND LAW SUPPORTING PROPOSED ACTION

1. RSA 141-E:4, I.(h) formerly authorized the Commissioner of the Department of Health and Human Services ("DHHS") to adopt rules relative to the licensing of contractors engaged in asbestos abatement activities, such requirements to be at least as stringent as those of the U.S. Environmental Protection Agency. Such rules were adopted in He-P 5000, *Asbestos Management Rules*.
2. NH Laws of 2004, Chapter 257:18, transferred the statutory responsibilities and rules of the Bureau of Environmental and Occupational Health within the Office of Community and Public Health, DHHS, to DES on July 1, 2004; including the asbestos licensing personnel and their duties pursuant to RSA 141-E.

3. NH Laws of 2005, Chapter 249, amended RSA 141-E to change all references to DHHS to DES.
4. RSA 141-E:10 authorizes DES to issue a license to any contractor or individual who engages in asbestos abatement activities.
5. RSA 141-E:4 authorizes DES to establish standards for asbestos abatement activities. Such standards were adopted in Env-A 1800, *Asbestos Management and Control*.
6. On September 1, 2005, the Division received an Application for License as an Asbestos Abatement Entity for ASTEC-Asbestos Technologies, Inc., a/k/a Air/Soil Technologies (the "License Application"). The License Application listed Michele D. Corcoran of 2 Whitney Court, in Bedford, New Hampshire as the responsible person having primary responsibility for and control over the asbestos work of the applicant.
7. On September 8, 2005, DES issued Asbestos Abatement Entity License No. AC-029 to the applicants, with an expiration date of September 7, 2006.
8. He-P 5008.07(c) authorizes DES to revoke a license for the violation of statutes and rules pertaining to asbestos.
9. ASTEC was issued a renewed asbestos abatement entity license on May 30, 2002, with an expiration date of May 30, 2003.
10. On August 5, 2003, ASTEC was issued a renewed asbestos abatement license with an expiration date of August 4, 2004.
11. ASTEC was not a duly-licensed asbestos abatement entity for the period of May 31, 2003 to August 4, 2003.
12. Env-A 1803.01 requires an asbestos abatement contractor to provide notice of asbestos abatement activities to DES at least 10 days prior to initiation of such activities.
13. Env-A 1803.09 requires an owner or operator to submit applicable fees with the written notification to DES for any major asbestos abatement project.
14. Env-A 1802.01(u) defines "owner or operator" as "any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both."
15. Env-A 1802.01(r) and (s) define major asbestos abatement projects as those that encompass more than 10 linear feet, 25 square feet, or 3 cubic feet of regulated asbestos-containing material

("RACM").

16. Env-A 1805.08 requires the owner or operator of a major asbestos abatement project to obtain the services of an independent industrial hygienist to conduct clearance air sampling at the completion of the work. Clearance air sampling is not required for a minor asbestos abatement project.

17. Env-A 1805.02 requires the contractor(s) and personnel involved in a major asbestos abatement project to be licensed and certified in accordance with NH Admin. Rule He-P 5000.

18. Env-A 1804.04 requires the owner or operator to keep records for each asbestos abatement project documenting compliance with the requirements of Env-A 1800, as well as all correspondence with DES on the project. Env-A 1804.03 requires that these records be kept for 30 years.

19. The Division has received copies of clearance air sampling reports from an industrial hygienist for several sites in New Hampshire at which ASTEC is identified as the asbestos abatement contractor, as noted in the following table (Table 1):

| Report Date | ASTEC Work Site Address |
|-------------|---------------------------------|
| 9/6/2002 | 10 Willow Avenue, North Hampton |
| 9/10/2002 | 65 Lebanon Street, Hanover |
| 9/13/2002 | 19 Pleasant Street, Pembroke |
| 9/23/2002 | 85 Manchester Street, Concord |
| 9/25/2002 | 4 Water Street, Nashua |
| 6/17/2003 | 651 Hanover Street, Manchester* |
| 8/12/2003 | 1070 Hayward Street, Manchester |
| 8/13/2003 | 233 Pembroke Street, Pembroke |
| 9/3/2003 | 19 Flag Street, Hollis |
| 9/13/2003 | 4 Wall Street, Concord |
| 9/29/2003 | |
| 10/6/03 | 580 Washington Road, Rye |
| 10/22/2003 | 33 Highland Street, Concord |
| 8/16/2004 | 1 Washington Court, Concord |
| 8/17/2004 | 30 Woodland Street, Nashua |

(Table 1)

20. DES did not receive the notifications required by Env-A 1803.01 from the owner or operator of the asbestos abatement projects listed in the preceding table.

21. DES did not receive the fees required by Env-A 1803.09 from the owner or operator of the asbestos abatement projects listed in the preceding table.

22. On October 20, 2005, the Division issued a Notice of Findings (the "NOF") to Ms. Corcoran. In the NOF, the Division requested that she provide copies of the notification forms and cancelled checks as proof that fees were paid for each of the projects listed in Table 1. The Division requested that Ms. Corcoran provide the information within 30 days of the date of issuance of the NOF.

23. The NOF was received by Michael J. Corcoran on October 25, 2005, as evidenced by a signed, certified mail postal receipt.

24. The Division has no record of a response to the NOF.

25. On April 20, 2006, DES issued Administrative Order No. ARD 06-003 (the "AO") to Michele and Michael Corcoran, requiring them to either submit proof that they had submitted notifications and paid fees for the projects in Table 1, or to pay the fees owed for those projects and submit documentation on the size of each project.

26. The AO required that proof of notifications made and fees paid be submitted within 15 days from the date of the AO, or that the fees be paid and documentation submitted within 30 days from the date of the AO. The Corcorans did not respond to the AO, and no appeal was filed.

IV. VIOLATIONS ALLEGED

1. Michele and Michael Corcoran violated Env-A 1803.01 by failing to submit written notification to DES at least 10 working days prior to beginning the 14 major asbestos abatement activities listed in Table 1 above.

2. Michele and Michael Corcoran violated Env-A 1803.09 by failing to submit applicable fees with written notification to DES for the 14 major asbestos abatement projects listed in Table 1 above.

3. Michele and Michael Corcoran violated Env-A 1805.02 by performing a major asbestos abatement project at 651 Hanover Street, Manchester in June of 2003, after allowing ASTEC's abatement entity license to expire on May 30, 2003, as noted(*) in Table 1.

4. Michele and Michael Corcoran violated Administrative Order No. ARD 06-003 by failing to submit documentation that notifications had been filed and fees paid on the 14 major asbestos

abatement activities listed in Table 1 above or, in the alternative, to submit the notification forms and fees required for said asbestos abatement activities, by May 20, 2006.

V. PROPOSED ACTION

1. Based on the violations identified in IV, above, the Division proposes that DES revoke the License.

VI. HEARING, RESPONSE, PROPOSED SETTLEMENT

Michele and Michael Corcoran have the right to a hearing to contest these allegations before the proposed license action is taken. The hearing would be a formal adjudicative proceeding pursuant to RSA 541-A:31, at which Michele and Michael Corcoran and any witnesses Michele and Michael Corcoran may call would have the opportunity to present testimony and evidence as to why the proposed action should not be taken. All testimony at the hearing would be under oath and would be subject to cross examination. If Michele or Michael Corcoran wishes to have a hearing, one will be scheduled promptly.

RSA 541-A:31, III(e) provides that Michele and Michael Corcoran have the right to have an attorney present to represent Michele and Michael Corcoran at Michele and Michael Corcoran's expense. If the License is an occupational license, under RSA 541-A:31, III(f), Michele and Michael Corcoran have the right to request DES to provide a certified shorthand court reporter at Michele and Michael Corcoran's expense. **Such request must be submitted in writing at least 10 days prior to the proceeding.**

Michele and Michael Corcoran may waive their right to a hearing. If Michele and Michael Corcoran waive the hearing, the Division will initiate the revocation of the License. Michele and Michael Corcoran should notify the Division of their decision by filling out and returning the enclosed form by **August 7, 2006**.

Anyone having questions regarding this matter should contact Barbara Hoffman, Enforcement Section Supervisor, Compliance Bureau, at 271-7874 or the DES Legal Unit at 271-7509.

COPY
Robert K. Scott, Director
DES Air Resources Division

Certified Mail #
Enclosures

cc: Gretchen Hamel, DES Legal Unit Administrator
Pamela G. Monroe, Compliance Bureau Administrator, DES Air Resources Division

RETURN THIS PAGE BY AUGUST 7, 2006

APPEARANCE

____ I desire a hearing in accordance with Env-C 200 regarding the License.

Name: _____
(Please type or print legibly)

Title: _____
(Please type or print legibly)

Signature

Date: _____

WAIVER OF HEARING

____ I certify that I understand my right to a hearing regarding the revocation of the Certificate and that I hereby waive those rights. I understand that DES will immediately revoke Asbestos Abatement Entity License No. AC-029, and I consent to that action.

Name: _____
(Please type or print legibly)

Title: _____
(Please type or print legibly)

Signature

Date: _____

Please return to: DES Legal Unit
 Attn: Michael Sclafani
 P.O. Box 95
 Concord, NH 03302-0095